

Issue: Access to the Grievance Procedure; Ruling Date: October 9, 2018; Ruling No. 2019-4790; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Equal Employment and Dispute Resolution

ACCESS RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2019-4790
October 9, 2018

On October 1, 2018, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. The Department of Behavioral Health and Developmental Services (the “agency”) challenges the grievant’s access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

In this case, the agency indicates that the grievant began working with the agency in a classified position on August 10, 2017. On February 10, 2018, the grievant transferred to another department within the agency, with the requirement that she complete the current probationary period. On June 27, 2018, due to performance reasons, the grievant’s probationary period was extended until February 10, 2019. However, on or about September 17, 2018, the grievant was terminated from employment. The grievant subsequently filed a dismissal grievance directly with EEDR to challenge her separation from employment. Upon receipt of a copy of the dismissal grievance, the agency has since informed EEDR that the grievant was terminated prior to the end of her probationary period and, thus, should not have access to file this grievance.

DISCUSSION

DHRM Policy 1.45, *Probationary Period*, provides that employees “who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment.”¹ In this instance, the grievant had not completed her probationary period at the time of termination. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³ Accordingly, the grievant does not have access to the

¹ DHRM Policy 1.45, *Probationary Period*.

² Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

³ *E.g.*, EDR Ruling No. 2005-1032.

grievance procedure to initiate a grievance to challenge her termination. As a result, this dismissal grievance will not proceed to a hearing and EEDR will close its file.

EEDR's rulings on access are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Equal Employment and Dispute Resolution

⁴ Va. Code § 2.2-1202.1(5).